



THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

FILE:

B-197076

DATE: April 17, 1980

MATTER OF:

S & G Services, Inc.

DIGEST: [Protest Against IFB CANCELLATION]

Protest of decision to cancel IFB based on analysis which showed it would be less costly to perform services in-house, is dismissed as untimely where protester objects to certain cost factors used in analysis but files objection well after these factors were made available to bidders after bid opening.

S & G Services, Inc. (S&G) protests the determination by the Department of the Army that it would be less costly for the Government to operate a motor pool in-house than to obtain those services by contract. This determination resulted in the cancellation of invitation for bids (IFB) No. DATB15-79-B-0066, issued for the management, operation and maintenance of the Transportation Motor Pool at Fort Benjamin Harrison, Indiana. The IFB provided that the low eligible bid would be subject to a Government cost comparison to determine the economic feasibility of performing the services in-house, and for the cancellation of the IFB if that bid, as adjusted by conversion costs for contract administration and related costs, Governmentfurnished material and utilities, and premature retirement and severance pay, exceeded the Army's in-house cost estimate.

S & G points out that its low, eligible bid of \$1,944,741 was substantially lower than the Army's in-house cost estimate of \$2,744,021, and protests the conversion costs by which S & G's bid price was adjusted to \$2,859,618, thereby resulting in the IFB's cancellation.

S & G contends that certain conversion costs set out in the Army's estimate were overstated, particularly the sums specified for contract administration and related costs, and costs allocated to early retirement and severance pay. S & G requests that this Office

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undertake a comprehensive audit of the Army's estimated conversion costs as well as other aspects of its estimate, and that we find the conversion costs to be excessive and the remainder of the estimate, setting forth the estimated costs for in-house performance, to be understated.

Generally, we regard a dispute over an agency decision to perform work in-house rather than to contract out for those services as involving a policy matter to be resolved within the Executive Branch. When, however, an agency utilizes the procurement system to aid in its decisionmaking, spelling out in a solicitation the circumstances under which the Government will or will not award a contract, we believe it would be detrimental to the system if, after the agency induces submission of bids, there is a faulty or misleading cost comparison which materially affects the decision as to whether a contract will be awarded. An allegation that a faulty cost analysis was made, however, will not be considered unless the protest is timely. See Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD 38.

Our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2) (1979), require that a protest be filed within 10 working days of when the basis for the protest is known or should have been known, whichever is earlier.

As previously noted, the IFB advised prospective bidders of the categories of conversion costs by which their bid prices would be adjusted for purposes of comparison with the Army's in-house cost estimate. Even more significantly, the IFB provided that copies of the cost comparison worksheet (i.e., the estimate) would be available for review after bid opening, and a period of at least 15 workdays after bid opening would be allowed for review by the interested parties of that cost comparison worksheet before any possible award would be made.

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The cost comparison worksheet shows the Army's conversion costs which would be added to bidders' prices for comparison with the in-house estimate. Appearing below those conversion cost factors on the worksheet were all components of the Army's in-house estimate except for Federal taxes; the total sum for Federal taxes (\$29,171) is not disputed and its later addition would not have altered the standing of S & G's adjusted bid price vis-a-vis the Army's in-house estimate.

Bid opening was conducted as scheduled on September 28, 1979, after which the cost comparison worksheet was available for bidder scrutiny. Even though the conversion costs by which S & G's bid would be adjusted were available, as well as all components of the in-house estimate (save Federal taxes) against which S & G's adjusted price would be compared, S & G neither protested the figures appearing on the cost comparison sheet nor did it seek any back-up information concerning those figures until sometime after November 20, 1979, when it apparently learned of the cancellation of the IFB; the actual protest was not filed with our Office until December 7, 1979.

Potential protesters must diligently pursue their prospective protests where circumstances indicate that an inquiry should be undertaken as to information which would support a subsequent protest. See Graphics, Communications Systems, Inc., B-186715, July 23, 1976, 76-2 CPD 75; Guardian Electric Manufacturing Company, 58 Comp. Gen. 119 (1978), 78-2 CPD 376.

In the instant case, the solicitation advised bidders that there would be a 15-day moratorium on any award action following the bid opening, during which period the Government's cost estimate would be made available for review. We believe it is incumbent upon parties interested in the outcome of the competition, such as S & G, to take advantage of the moratorium period so that any objections to the Government estimate can be aired and resolved in a timely manner. We need not

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decide in this case whether in these circumstances S & G should have filed its protest during the moratorium (which ended October 13) or could have protested as late as 10 working days after the expiration of the moratorium (October 26), on the basis that S & G "should have known" of its grounds for protest during the moratorium. Under either standard, S & G's protest would be untimely: it was not filed until December 7. Therefore, S & G's protest of the computations contained in the worksheet will not be considered.

. The protest is dismissed.

Havry R. Van Cleve Milton J. Socolar General Counsel